IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5816 of 2004

Shri Bhausaheb Pandharinath Khade ...Applicant
(Orig.Complainant)

V/s

Shri Baban Devaji Dhavale & Anr. ...Respondents

Shri Dilip Bodke for applicant

Shri Vikas Shivankar i/b R.S. Kate for respondent No.1

Shri A.S. Shitole, APP for the State

CORAM: V.M. KANADE, J.

DATED: MARCH 4,2005

P.C. :-

. Heard learned counsel for applicant and respondent. The plea for early hearing in the appeal is granted. The appellant is challenging the order passed by the trial court by exercising its discretion under section 256 of Criminal Procedure Code dismissed the complaint for want of prosecution. The learned counsel appearing on behalf of appellant has taken me to the brief story of complaint and has pointed out that the complaint filed on 10/06/2004 and process issued on 14/7/2004. Thereafter, it was adjourned to 18/08/2004 as summons was not served. On the next date as the accused did not remain present, non-bailable warrant issued on 17/09/2004.On 16/10/2004 the accused was supposed

to appear in the court and apply for cancellation of non-bailable warrant. On the said date, the complainant could not remain present in the court on account of certain personal difficulties and hence the trial court dismissed the complaint for want of prosecution. It is submitted by learned counsel for appellant that complainant has remained on all earlier dates and the trial court ought not to dismiss the complaint by exercising its discretion under section 256 of Criminal Procedure Code.

. The learned counsel for respondents has vehemently opposed the said submission. It is submitted that discretion exercised by the trial court was legal. Even in that matter there is no reason to interfer with the view taken by the trial court.

. In my view this is a fit case where the complaint is liable to be restored to file. The complainant has remained present on each and every date. On the date of dismissal the complainant the accused appeared in the court pursuant to non-bailable warrant issued. The trial court instead of enforcing the non-bailable warrant dismissed the complaint considering the fact that complainant was not pursuing the matter with due diligence. With the above, the impugned order is set aside. Appeal is allowed. The matter is remanded to the trial court. The trial court to decide the case as expeditiously as possible.

(V.M. Kanade, J.)